

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**GEORGE LEGRAND AND
STANLEY BERNSTEIN,
Plaintiffs**

v.

**STATE FARM LLOYDS,
Defendant**

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Civil Action No. 5:20-cv-1167

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant State Farm Lloyds files this Notice of Removal pursuant to 28 U.S.C. §1446(a) and respectfully shows the following:

Procedural Background

1. On August 26, 2020, George Legrand and Stanley Bernstein filed Plaintiffs' First Amended Original Petition styled Cause No. 2020CI15065; *George Legrand and Stanley Bernstein v. State Farm Lloyds*; In the 131st Judicial District, Bexar County, Texas.¹

2. On September 2, 2020, service of suit on Defendant State Farm Lloyds' ("State Farm") registered agent occurred and Defendant timely thereafter answered.

3. State Farm now timely files this Notice within 30 days of service of suit.

¹ Plaintiffs originally sued State Farm Lloyds, Inc. which is not an insurer of Plaintiffs' property. Plaintiffs then amended their petition effectively nonsuiting their claims against State Farm Lloyds, Inc. and instead sued State Farm Lloyds which is the insurer of the property in question on August 26, 2020. Service was first effected on September 2, 2020 on State Farm Lloyd's registered agent. State Farm Lloyds answered on September 25, 2020. State Farm Lloyds now timely files this Notice of Removal within 30 days of service of suit.

Nature of the Suit

4. This lawsuit involves a dispute over Defendant's handling of Plaintiffs' insurance claim for damages allegedly caused by a portion of the exterior stucco wall falling off the building wall on October 9, 2019, to Plaintiffs' property at 2511 North Saint Mary's Street San Antonio, Texas 78212, Bexar County, Texas. Plaintiffs asserts causes of action against State Farm for breach of contract and violation of Chapter 542 of the Texas Insurance Code. Plaintiffs currently seek damages to repair or restore Plaintiffs' office building, damages, statutory interest penalties, attorneys' fees, and costs of court.

Basis for Removal

5. Removal is proper under 28 U.S.C. §1332 because there is complete diversity of citizenship between the proper parties to the suit and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.²

6. There is complete diversity of citizenship between the parties. Upon information and belief, Plaintiffs were citizens of Texas when their Petition was filed, and continue to be citizens of Texas.

7. At the time Plaintiffs filed their First Amended Original Petition in State District Court on August 26, 2020, naming State Farm Lloyds as Defendant, and as of the date of filing this Notice, Defendant State Farm Lloyds is not a citizen of the State of Texas for diversity jurisdiction purposes.³

² The First Amended Original Petition asserts Plaintiffs' damages are greater than \$100,000 and less than \$200,000. *See* Exhibit A, Plaintiffs' Original Petition at page 3.

³ *See Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1541 (1994) (defining "Lloyds' Plan" insurer). *See, e.g. Garza v. State Farm Lloyds*, 2013 WL 3439851, at *2 (S.D. Tex. July 8, 2013) ("Therefore, the Court finds that State Farm has sufficiently demonstrated by a preponderance of the evidence that its underwriters are not citizens of Texas. This means State Farm and the Plaintiffs are completely diverse.")

8. Further, this Court has diversity jurisdiction over this matter because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiffs have pled their damages exceed \$100,000 in damages in their petition.⁴

9. Moreover, in determining the amount in controversy, the court may consider “policy limits and potential attorney’s fees, penalties, statutory damages, and punitive damages.”⁵ Here, Plaintiffs claim that a portion of their stucco wall fell causing damages to their property that Plaintiffs insured through State Farm Lloyds.⁶ Plaintiffs seek damages for State Farm’s alleged failure to pay them what was owed under the terms of their insurance contract.⁷ The Policy at issue for the reported October 9, 2019 date of loss is a Texas Business-Office Policy with coverage limits of \$487,000.00 for the office building and \$167,500.00 for personal property.

⁴ See Exhibit A, Plaintiffs' First Amended Original Petition at page 3.

⁵ *St. Paul Reinsurance Co., Ltd v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); see *Ray v. State Farm Lloyds*, 1999 WL 151667 (N.D. Tex. Mar. 10, 1999) at *2-3 (finding a sufficient amount in controversy in Plaintiffs’ case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co., et. al.*, 75 F. Supp. 2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Insurance Exchange*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages); see also *Waldon v. Stonebridge Life Ins. Co.*, 2013 WL 12090036 (W.D. Tex. Oct. 8, 2013) at *1 (“ In ascertaining the amount in controversy, a court may consider policy benefits, potential attorney's fees, as well as penalties, statutory damages, and punitive damages the insurer could be liable for under state law.” (citing *St. Paul*, 134 F.3d at 1253)).

⁶ See Exhibit A, Plaintiffs' First Amended Original Petition at page 2.

⁷ See Exhibit A, Plaintiffs' First Amended Original Petition at pages 3.

10. In addition, Plaintiffs seek actual damages and statutory interest penalties.⁸ Plaintiffs also seek attorney fees for bringing this suit.⁹ Thus, given the plain language of their pleading, the Policy involved in Plaintiffs' claim, the nature of Plaintiffs' claim, and the types of damages sought, it is more likely than not that the amount in controversy exceeds the federal jurisdictional minimum of \$75,000.00.

11. Based on the Policy's coverage limits and the damages alleged, it would be legally possible for Plaintiffs to obtain a recovery of at least \$75,000.00.

The Removal is Procedurally Correct

12. State Farm Lloyds was first served with Plaintiffs' First Amended Original Petition in District Court on September 2, 2020. Therefore, State Farm filed this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b).¹⁰

12. Venue is proper in this district under 28 U.S.C. §1446(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in this district.

13. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice as Exhibit C.

14. Pursuant to 28 U.S.C. §1446(d), promptly after State Farm files this Notice, written notice of the filing of this Notice of Removal will be given to Plaintiffs, the adverse parties.

⁸ See Exhibit A, Plaintiffs' First Amended Original Petition at 3.

⁹ See Exhibit A, Plaintiffs' First Amended Original Petition at page 3.

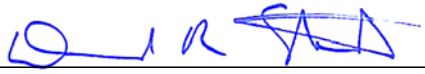
¹⁰ As discussed in Footnote 1 above, Plaintiffs' first served State Farm Lloyds after filing its First Amended Original Petition.

15. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice will be filed with the District Clerk for 131st Judicial District for Bexar County, Texas, promptly after State Farm files this Notice.

WHEREFORE, Defendant State Farm Lloyds requests that this action be removed from the 131st Judicial District for Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

LINDOW ▪ STEPHENS ▪ TREAT LLP

By: 
David R. Stephens
State Bar No. 19146100
Attorney-in-Charge
Rebecca Rábago
State Bar No. 24042442
One Riverwalk Place
700 N. St. Mary's St., Suite 1700
San Antonio, Texas 78205
Telephone: (210) 227-2200
Facsimile: (210) 227-4602
dstephens@lstlaw.com
rrabago@lstlaw.com
Counsel for Defendant State Farm Lloyds

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Removal was filed electronically with the United States District Court for the Western District of Texas – San Antonio Division, with notice of case activity to be generated and sent electronically by the Clerk of the Court with ECF notice being sent and a copy mailed via certified mail on the 1st day of October, 2020, addressed to those who do not receive notice from the Clerk of the Court.

Jerry A. Gibson
State Bar No.:07868000
LEGRAND & BERNSTEIN
3010 Panzano Place
San Antonio, Texas 78258



David R. Stephens/ Rebecca Rábago

Exhibit A

PRIVATE PROCESS

Case Number: 2020-CI-15065



2020CI15065 S00002

GEORGE LEGRAND ET AL
VS.

STATE FARM LLOYDS

(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
131st JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: STATE FARM LLOYDS INC

BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY

DELIVERED
9/2/20
By LM
Austin Process, LLC
PSC-1000

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and FIRST AMENDED PETITION, a default judgment may be taken against you." Said FIRST AMENDED PETITION was filed on the 26th day of August, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31ST DAY OF AUGUST A.D., 2020.

JERRY ALLEN GIBSON
ATTORNEY FOR PLAINTIFF
3010 PANZANO PL
SAN ANTONIO, TX 78258-4662



Mary Angie Garcia
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

By: Leticia Leija, Deputy

GEORGE LEGRAND ET AL
VS
STATE FARM LLOYDS

Officer's Return

Case Number: 2020-CI-15065
Court: 131st Judicial District Court

I received this CITATION on _____ at _____ o'clock ____ M. and () executed it by delivering a copy of the CITATION with attached FIRST AMENDED PETITION the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____ M. at: _____ or () not executed because _____

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____, County, Texas

By: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

Declarant _____

RETURN TO COURT (DK002)

PRIVATE PROCESS

Case Number: 2020-CI-15065



2020CI15065 S00002

GEORGE LEGRAND ET AL

VS.

STATE FARM LLOYDS

(Note: Attached Document May Contain Additional Litigants.)

 IN THE DISTRICT COURT
 131st JUDICIAL DISTRICT
 BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: STATE FARM LLOYDS INC

BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and FIRST AMENDED PETITION, a default judgment may be taken against you." Said FIRST AMENDED PETITION was filed on the 26th day of August, 2020.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31ST DAY OF AUGUST A.D., 2020.

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Officer's Return

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I received this CITATION on _____ at _____ o'clock ____M. and () executed it by delivering a copy of the CITATION with attached FIRST AMENDED PETITION the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____M. at _____ or () not executed because _____.

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

By: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

Declarant _____

ORIGINAL (DK002)

FILED
8/26/2020 3:05 PM
Mary Angie Garcia
Bexar County District Clerk
Accepted By: Brenda Carrillo

citpps

Cause Number: 2020CI15065

GEORGE LEGRAND AND	§	IN THE DISTRICT COURT
STANLEY BERNSTEIN	§	
<i>Plaintiffs</i>	§	
	§	
VS.	§	131 st JUDICIAL DISTRICT
	§	
STATE FARM LLOYDS	§	
<i>Defendant</i>	§	BEXAR COUNTY, TEXAS

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

Now come George LeGrand and Stanley Bernstein, Plaintiffs, and file this their Plaintiffs First amended Original Petition against, State Farm Lloyds, and would show unto the Court as follows:

I.

DISCOVERY PLAN

Discovery in this case shall proceed under level three.

II.

PARTIES

Plaintiff, George LeGrand, resides in Bexar County, Texas. His place of business is 2511 North Saint Mary's Street, San Antonio, Texas 78212.

Plaintiff, Stanley Bernstein, resides in Bexar County, Texas. His place of business is 2511 North Saint Mary's Street, San Antonio, Texas 78212.

Defendant, State Farm Lloyds, is a Texas insurance company organized under Chapter 941 of the Texas Insurance Code. Its principal place of business is 1251 State St., Suite 1000, Richardson, Texas.

III.

SERVICE OF CITATION

Defendant, State Farm Lloyds, can be served by certified mail through its registered agent for service: Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

III.

JURISDICTION

This is a suit to recover insurance benefits based upon breach of contract. The amount in controversy exceeds the minimum jurisdictional amount.

IV.

VENUE

Venue in Bexar County, Texas under Texas Civil Practice and Remedies Code §§15.002(1) and 15.035(a). Venue facts include

- a. Defendant issued a contract of insurance covering loss to a building located at 2511 North Saint Mary's Street, San Antonio, Texas 78212.
- b. The loss was payable to the Plaintiffs at the above address in Bexar County, Texas.

V.

FACTUAL STATEMENT

Plaintiffs own a building located at 2511 North Saint Mary's Street, San Antonio, Texas 78212. On October 09, 2019 a large portion of the outside stucco fell off the building wall. Defendant had issued a property insurance policy covering the above address, Policy 90-BR-0864-2. The policy has effective dates of May 31, 2019-May 31, 2020.

Plaintiffs incurred expenses to repair and restore the building wall. Plaintiffs notified Defendant of the loss and requested payment for the reasonable expenses incurred. The claim was denied by Defendant. The claim remains unpaid.

VII.

CAUSE OF ACTION

Defendant's failure to pay the claim is a breach of contract. Plaintiffs have incurred reasonable costs of repair and restoration.

VIII.

NOTICE OF INTENT TO USE DISCOVERY MATERIALS

Pursuant to Tex. R. Civ. P. Rule 47 Plaintiffs give notice of their intent to recover damages between \$100,000.00-\$200,000.00.

IX.

PROMPT PAYMENT OF CLAIMS ACT

Defendant's failure to pay the insured claim violates the Texas Prompt Payment of Claims Act, Tex. Ins. Code §542.051 et seq. Plaintiff sues for the additional damages and attorneys fee and costs allowed by that statute [§542.060(a)].

X.

CONDITIONS PRECEDENT

All conditions precedent to filing this suit have been met by Plaintiffs.

XI.

ATTORNEYS FEES

Plaintiffs has incurred reasonable and necessary attorney's fees in the prosecution of this case. Plaintiffs sue to recover attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001(8).

XII.

REQUEST FOR DISCLOSURE

Pursuant to Tex. R. Civ. P. Rule 194, Plaintiffs request Defendant to file responses to Request for Disclosure sections *a through l*. Said responses shall be file on or before 50 days after service of citation.

XIII.

REQUEST FOR PRODUCTION

Pursuant to Texas Rule of Civil Procedure Rule 196.1 Plaintiffs request Defendant to produce to Plaintiff's counsel (on or before 50 days from service of citation) the following documents (including documents as defined in Rule 196.4):

- a. A true and correct copy of the insurance policy in question, policy Number 90-BR-0864-2.
- b. A true and correct copy of the claim file in this matter.
- c. Documents showing that the loss in question is not covered by the policy.

XIV.

NOTICE OF INTENT TO USE DISCOVERY MATERIALS

Pursuant to Tex. R. Civ. P. Rule 193.7 Plaintiffs give notice of their intent to use discovery materials in any hearing or trial of this cause.

XV.

Pursuant to Section 30.014 of the Texas Civil Practice and Remedies Code. Plaintiff, GEORGE LeGRAND provides the following partial identification information:

TDL: XXXXX457

SSN: XXX-XX-X712

XVI.

Pursuant to Section 30.014 of the Texas Civil Practice and Remedies Code, Plaintiff, STANLEY BERNSTEIN provides the following partial identification information:

TDL: XXXXX7411

SSN: XXX-XX-X376

PRAYER

Wherefore premises considered, Plaintiffs pray that Defendant be cited and commanded to appear and that on trial of this case Plaintiffs recover their damages, attorney's fees, costs and such other relief to which they may be entitled.

RESPECTFULLY SUBMITTED,

/s/ Jerry A. Gibson

Jerry A. Gibson
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Fax (210) 493-1217
State Bar# 07868000
jerry@jgibsonmediation.com

ATTORNEY FOR PLAINTIFFS